

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.4234 OF 2006

IN

APPEAL(LODG) NO.995 OF 2006

AND

APPEAL (LODG.) NO.995 OF 2006

Mr.Majid Oomerbhoy. ...Appellant.

vs.

Mr.Rashid Sattar Oomerbhoy
and others. Respondents.

Mr.Gaurav Joshi i/b. Thakore Jariwala & Associates,
for Appellant.

None for Respondents.

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 24th July, 2007.

P.C.:-

Heard the learned Counsel appearing for both the sides. Assuming that there is sufficient cause shown for condonation of delay, in our opinion, the appeal itself is not maintainable. What has been done by the order impugned is that one of the defendants, who is admittedly a partner of the firm which admittedly is the owner of the trade mark, has been permitted to file civil suit to protect the trade mark against infringement. In view of the judgment of the Supreme Court in the case "Shah Babulal Khimji vs. Jayaben D.Kania and another, (1981)4 Supreme Court Cases 8" this order cannot be termed as judgment. Therefore, appeal is not maintainable. The appeal as also the notice of motion are disposed of.

(D.K.DESHMUKH, J.)

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